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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Case No.: 1:22-CV-07221-DG-SJB

JAMES PRICE,
15801 SW 137th Ave
Miami, Florida 33177

SHERRY PRICE,
243-10 138th Ave #2F
Rosedale, NY 11422
Plaintiffs,

v.

THE UNITED STATES PROBATION
AND PRE-TRIAL SERVICES, EDNY,
Defendants.

MOTION REQUESTING THE REVERSAL OF
MAGISTRATE'S DECISION GRANTING
EXTENSION OF TIME TO THE DEFENDANTS

COMES NOW, James Price and Sherry Price, husband and wife ("the Plaintiffs"), and file this, their motion requesting the reversal of the magistrate's decision granting an extension of time to the Defendant(s).

I. BACKGROUND

1. On November 29, 2022, Plaintiff James Price, and Sherry Price, *pro se* litigants, filed their COMPLAINT.
2. On February 2, 2023, the Defendant(s) through counsel AUSA David A. Cooper filed a Letter Motion for Extension of Time until March 23, 2023, to File their Answer ("Answer").

3. On February 3, 2023, the Honorable Magistrate Judge Sanket J. Bulsara, granted the Defendant's Motion for an Extension of Time.

II. FACTS AND CITATIONS

4. On or about late December 2022 through early January 2023, *phone contact was made* with AUSA David Cooper for the Defendant(s), providing contact information.

5. On February 2, 2023, an attempt was made to contact AUSA David Cooper by phone, leaving a voice message containing contact information. A second attempt was made on February 3, 2023, at 9:00 AM to AUSA David Cooper but by 9:23 AM the Letter Motion for Extension of Time was discovered after which a third unsuccessful telephonic attempt was made. A voice message left in opposition to the Defendant's Letter Motion for Extension of Time was made to AUSA David Cooper.

6. With each attempt to contact AUSA David Cooper by telephone, a voice message was left including name, contact phone number, and reason for the call.

7. United States Probation and Pre-Trial Services, EDNY, through counsel AUSA David A. Cooper, in Letter Motion to the Honorable Judge Bulsara, stated he was "*unable to speak with Plaintiff pro se James Price to ascertain his consent to this request because he is currently incarcerated, nor was the undersigned able to speak with Plaintiff pro se Sherry Price to ascertain her consent to this request because she failed to include contact information such as*

a telephone number or email address that would facilitate contemporaneous communication" [ECF 5].

8. On February 3, 2023, AUSA David Cooper, one day after filing his letter motion to the Honorable Bulsara, AUSA David Cooper mailed a copy of his request for an extension of time to Plaintiff Sherry Price. See Exhibit "A" United States Postal Service (USPS) tracking and delivery confirmation.

9. AUSA David Cooper's claim of "missing" information preventing him from contacting Plaintiff Sherry Price was clearly false.

10. AUSA David Cooper further stated Plaintiff James Price "*alleges that he is married to Plaintiff Sherry Price, who is alleged to reside in the Eastern District of New York.*"

12. Had AUSA David Cooper given due diligence in reviewing the Complaint he would have known or reasonably should have known that in Plaintiff's Exhibit "C" email to Robert Capers (Chief United States Probation Officer), Vita Quartara (Deputy Chief United States Probation Officer), and Lawrence Andres (Supervisor of Officer Kristen Aliperti), included both her phone number and email address he alleged was "missing."

13. Had U.S. Attorney David Cooper given due diligence in reviewing the Complaint he would have known or reasonably should have known that Exhibit "B" contained a copy of the marriage certificate issued by the State of Florida as confirmation and evidence of marriage by Plaintiff James Price to Sherry Price (F/K/A Radika Rampersad).

14. Plaintiff James Price does not deny the fact that he is incarcerated, instead simply asks the question of how AUSA David Cooper was unable to communicate with Plaintiff due to lack of a phone number or email that would facilitate contemporaneous communication when he readily had available the phone number and email address of Plaintiff Sherry Price and mailing address for both James Price and Sherry Price. See Exhibit "B" Summons in a Civil Action

15. Additionally, U.S. Attorney David Cooper, would have also known that Exhibit "C" (attached to Plaintiff's complaint), clearly states that Sherry Price (F/K/A Radika Rampersad) is a resident of the Eastern District of New York.

16. United States Probation and Pre-Trial Services, EDNY was able to contact and inform Plaintiff James Price by letter mail on October 21, 2021, that his transfer request to the EDNY to reside with his wife was denied. AUSA David Cooper, counsel for the Defendant(s) had 60 days in which to contact either Plaintiff... yet he was unable to contact Plaintiff James Price or Sherry Price by letter mail to assert their consent to his request for an extension of time despite having their contact information.

17. It is a known fact that United States Attorneys "*do not*" contact inmates by phone or email. *Inmates are always contacted through letter mail.*

18. Probation Officer (EDNY) Kristen Aliperti contacted Plaintiff Sherry Price by phone and scheduled a date and time to visit her residence. AUSA David Cooper representing United States Probation and Pre-Trial Services, EDNY found it impossible to contact Plaintiff Sherry Price by phone, email, or letter mail to ascertain her consent to his request for an extension of time.

19. Had AUSA David Cooper, given due diligence to the Plaintiff's Complaint and attached Exhibits he would have known or reasonably should have known the alleged "missing" information was in his possession.

20. Additionally, had AUSA David Cooper, counsel for the Defendant(s) communicated with United States Probation and Pretrial Services, EDNY, or Probation Officer Kristen Aliperti, he would have readily and easily obtained the phone number for Plaintiff Sherry Price he claimed to be "missing."

21. United States Probation and Pre-Trial Services, EDNY had sixty (60) days as a government official to respond to the Plaintiff's Complaint.

22. Had AUSA David Cooper given due diligence to the Complaint he would have known or reasonably should have known that Plaintiff James Price has a scheduled release date of July 23, 2023.

23. AUSA David Cooper's willful delay and late request for an extension of time to answer, move, or otherwise respond to the Complaint because he is awaiting additional information to respond is a tactic used by the Defendant(s) to prolong the response time by both the Defendant(s) and Plaintiffs. There is an *urgency* in this matter. AUSA David Cooper's willful false claim of "missing" information, late filing, and delayed response *does not* suspend or halt the clock, which results in the mootness of this Complaint on July 23, 2023, without a decision from this Court.

24. Mr. Price brought to USPO's and the BOP's attention that he has NO ties to FLSD, NO family in FLSD, NO residence in FLSD, No healthcare in FLSD, and NO employment in FLSD. The BOP informed Plaintiff James Price that unless

United States Probation and Pre-Trial Services, EDNY approves his transfer from prison in FLSD to EDNY he will be released as “homeless and indigent.”

25. United States or a United States agency, or an officer or employee of the United States as described in Fed. R. Civ. P. 12(a)(2) or (3) shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, *within sixty (60) days after the service upon the United States attorney of the pleading in which the claim is asserted.*

26. AUSA David Cooper not only disregard the law, but he also failed to respond *within the sixty (60) days* allotted to him and instead filed a Letter Motion for an Extension of Time two (2) business days after the required deadline.

27. In his request for an extension of time, AUSA David Cooper requested an extension *from February 6, 2023*, implying his response deadline was later than his letter motion dated February 2, 2023. Exhibit “C” Confirmation of tracking and delivery of Complaint.

28. In computing, any period of time prescribed or allowed by the Local Civil Rules or the Local Admiralty and Maritime Rules, the provision of Fed. R. Civ. P. 6 shall apply unless otherwise stated. In these Local Rules, as in the Federal Rules as amended effective December 1, 2009, Saturdays, Sundays, and legal holidays are no longer excluded in computing periods of time. If the last day of the period is a Saturday, Sunday, or legal holiday.

29. On February 3, 2023, Plaintiff Sherry Price immediately filed her objections to the Magistrate Judge’s approval of the Extension of Time granted to Defendant(s).

30. As of the date of this Motion, the *pro se* clerk's office for the EDNY has failed to update the docket showing the Plaintiff's Opposition to the Defendant's Motion for An Extension of Time to File Answer, stamped and dated February 3, 2023. See Exhibit "D".

30. Plaintiff James Price and Sherry Price request the Honorable Magistrate Judge Bulsara reconsider his decision and reverse his approval for an Extension of Time. The Plaintiffs argue that the automatic order granting the requested extension of time failed to consider the warranted reasons for granting the extension.

31. Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, a court may for cause shown enlarge the period in which a response is due. Although what cause must be shown is not specifically set out in the rule, some justification for the enlargement of time is required. Generally, great discretion is granted to courts in determining whether to enlarge a time period. See *Maldonado-Denis v. Castillo-Rodriguez*, 23F3d 576, 584 (1st Cir. 1994) (trial court granted leeway in granting or denying enlargement of time). Further, the standard for overturning a Magistrate Judge's order is difficult to meet. *A district court may consider any matter where it has been shown that the Magistrate Judge's order was clearly erroneous or contrary to law.* 28 U.S.C. § 636 (b)(1)(A) (2000). Given the discretion afforded to courts in determining whether to extend the deadline and the difficult standard for overturning a Magistrate Judge's decision. The plaintiffs have met their burden of showing that the Magistrate Judge's order was clearly erroneous and contrary to the law.

32. Although the Court affirms the Magistrate Judge's order, this Court in the interest of justice is required to review the Plaintiff's timely objections to reverse the Magistrate Judge's decision and uphold the statutes.

33. Simply stated another way, if AUSA David Cooper is allowed to disregard the statutes without any regard or consequences while making false claims, why should the Plaintiff be held accountable or required to abide by or follow the statutes?

CONCLUSION

WHEREFORE, in view of the following facts, arguments, and citations, the Plaintiffs respectfully request the Honorable Magistrate Judge Bulsara reconsider his decision in granting the Defendant's Letter Motion for Extension of Time. Additionally, granting an Order for the reversal of the extension of time.

Date: February 17, 2023.

Respectfully Submitted,

**James
Price**  Digitally signed by
James Price
Date: 2023.02.16
22:19:16 -05'00'

/s/James Price

**Sherry
Price**  Digitally signed by
Sherry Price
Date: 2023.02.16
22:19:58 -05'00'

/s/Sherry Price

Exhibit

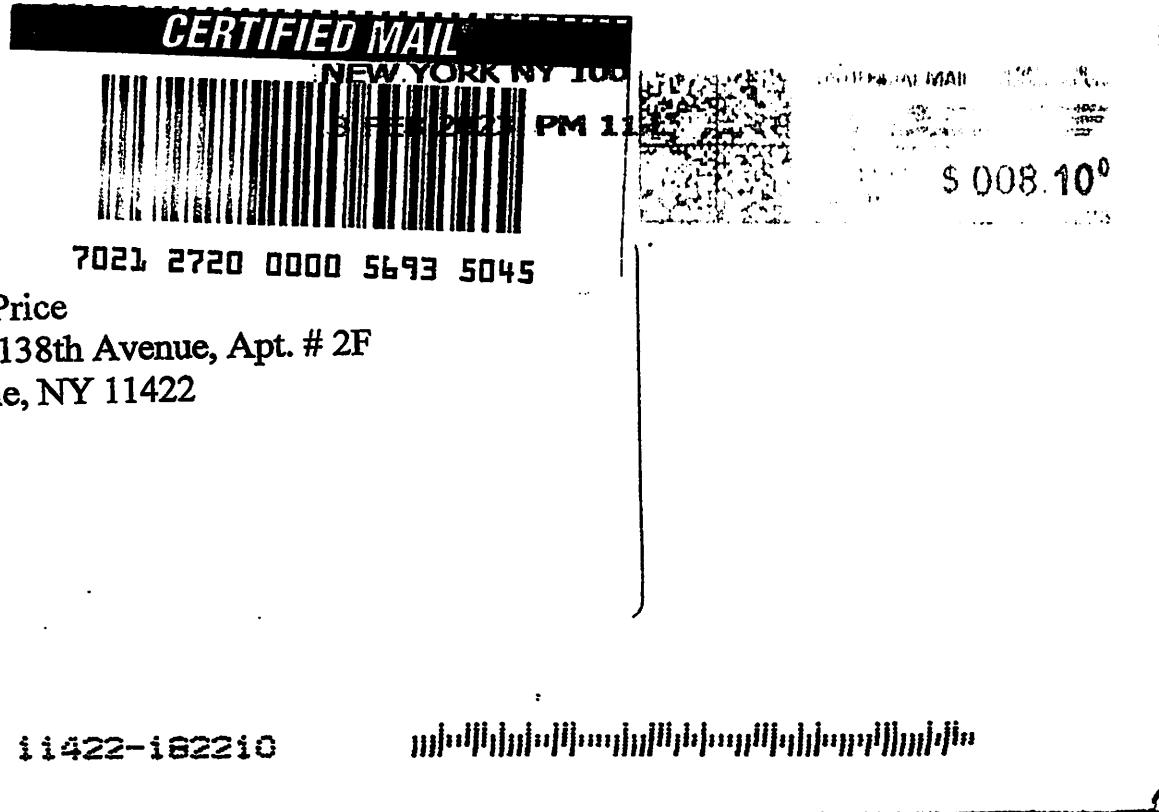
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U.S. Department of Justice

United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

Official Business
Penalty for Private Use \$300

Sherry Price
243-10 138th Avenue, Apt. # 2F
Rosedale, NY 11422



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U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 2, 2023

By ECF

The Honorable Sanket J. Bulsara
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *James Price, et al. v. U.S. Prob. & Pretrial Servs., EDNY,
Civ. No. 22-cv-7221 (Gujarati, J.) (Bulsara, M.J.) (E.D.N.Y.)*

Dear Magistrate Judge Bulsara:

This Office represents Defendant U.S. Probation Office for the Eastern District of New York (“Defendant” or, alternatively, “U.S. Probation Office”) in the above-referenced action commenced by Plaintiffs *pro se* James Price and Sherry Price pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (the “APA”). Defendant respectfully requests an extension of time to answer, move or otherwise respond to the Complaint, from February 6, 2023 until March 23, 2023. This is the first such request, and no other deadlines are affected. The undersigned was unable to speak with Plaintiff *pro se* James Price to ascertain his consent to this request because he is currently incarcerated, nor was the undersigned able to speak with Plaintiff *pro se* Sherry Price to ascertain her consent to this request because she failed to include contact information such as a telephone number or email address that would facilitate contemporaneous communication.

By way of background, Plaintiff James Price, who is currently incarcerated at Federal Correctional Institution, Miami (“FCI Miami”) in the Southern District of Florida, alleges that he is married to Plaintiff Sherry Price, who is alleged to reside in the Eastern District of New York. *See Compl. ¶¶ 3-4*, ECF No. 1. Plaintiff James Price submitted a request to have the location of his supervised release transferred from the Southern District of Florida to the Eastern District of New York, which the U.S. Probation Office allegedly denied. *See Compl. ¶ 8*, ECF No. 1. Plaintiffs now seek, pursuant to the APA, “entry of an order to set aside the [U.S. Probation Office’s] decision and order the transfer of [Plaintiff James] Price’s supervised release to the [Eastern District of New York].” *See Compl.*, at 7, ECF No. 1.

Defendant seeks an extension of time to answer, move, or otherwise respond to the Complaint because the undersigned is awaiting additional information needed to respond to the Complaint. This information from the agency is needed to be able to properly evaluate the Complaint.

This is Defendant's first request for an extension of time. This request does not affect any other deadlines.

Defendant thanks the Court for its consideration of this matter.

Respectfully submitted,

BREON PEACE
United States Attorney
Attorney for Defendants

By: /s/ David A. Cooper
DAVID A. COOPER
Assistant U.S. Attorney
(718) 254-6228
david.cooper4@usdoj.gov

cc: **By USPS**
James Price
15801 SW 137th Avenue
Miami, FL 33177

Sherry Price
243-10 138th Avenue, Apt. # 2F
Rosedale, NY 11422
Plaintiff's pro se

Exhibit B

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Eastern District of New York

JAMES PRICE, SHERRY PRICE

Plaintiff(s)

v.

UNITED STATES PROBATION
AND PRE-TRIAL SERVICES, EDNY

Defendant(s)

CV-22-7221

Civil Action No.

GUJARATI, J.
BULSARA, M.J.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

UNITED STATES PROBATION AND PRE-TRIAL SERVICES
147 Pierrepont Street, Brooklyn, New York 11201-2712

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

James Price

USM No. 98922004

15801 SW 137th Ave

Miami, FL 33177

Sherry Price

243-10-138th Ave # 2F

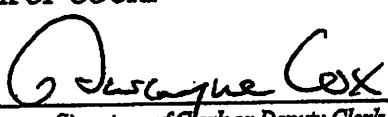
Rosedale NY 11422

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.

You also must file your answer or motion with the court.

BRENNA B. MAHONEY
CLERK OF COURT

Date: NOV 29 2022


Signature of Clerk or Deputy Clerk

Exhibit

C

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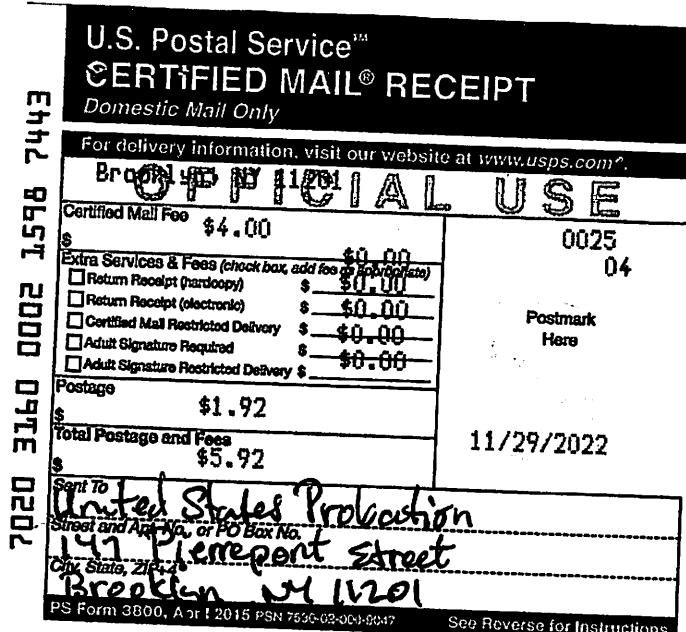
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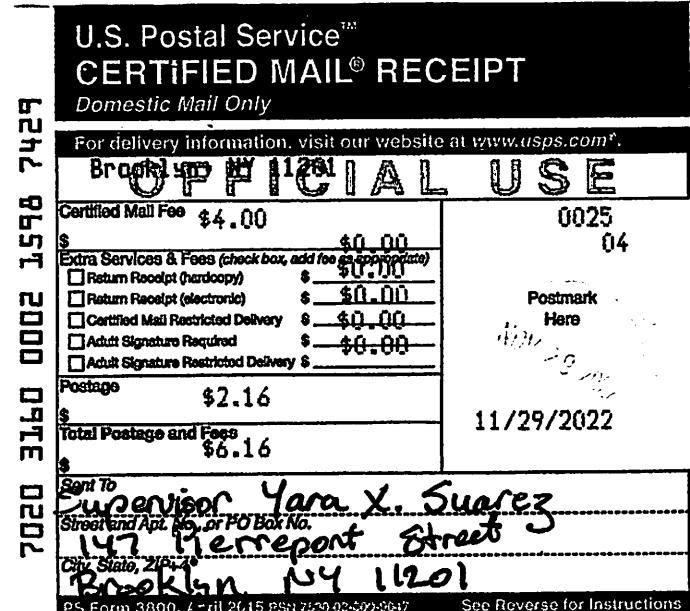
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December 1, 2022, 7:43 am

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Exhibit D